

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9458  
 )  
Appeal of )

## INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his ANFC benefits because of his wife's receipt of a lump-sum Social Security payment. The issue is whether this lump-sum was "unavailable" to the family for circumstances beyond its control.

## FINDINGS OF FACT

The petitioner lost his job in August, 1989, and applied for and began receiving ANFC benefits. His wife, who is disabled, was found eligible for Social Security benefits in September, 1989, and at that time received a retroactive lump-sum payment of \$968.50. The department then notified the petitioner that his ANFC benefits would be closed for one month (and that any "remainder" of the lump-sum would be considered as income for the following month).

However, the petitioner had spent the entire lump-sum shortly after it was received on expenses incurred in moving his family to another apartment. When the petitioner had lost his job he had fallen one month behind in rent at his old apartment. When he began to receive ANFC he told his landlord that he could only pay the rent by giving the landlord money

on the 1st and the 15th of each month. The rent was \$425.00 per month. The petitioner received \$498.00 a month in ANFC, 60% of which was paid on the 1st of each month, 40% on the 15th.

The landlord refused to accept this arrangement and gave the petitioner the following written notice:

This is to inform you that I can not wait until the 15th of month for the balance of your rent.

If you cannot pay it by the 1st of the month you will have to find another place to live.

At this time, the petitioner was already a full month behind in his rent. The landlord had previously informed him that he would not tolerate any rental arrearages. The petitioner's landlord was also an attorney, and the petitioner believed that if he did not move immediately, he would quickly be served with legal eviction process. Thus, the petitioner immediately began looking for another apartment. Fortunately (or so it seemed at the time), he promptly found one.

Although the rent on the new apartment was more, \$525.00 a month, the new landlord agreed to accept semi-monthly payments and to allow the petitioner to do work around the apartment complex to offset some of the rent. Also, the apartment was within walking distance (the petitioner had no car) to a job the petitioner was starting. The petitioner moved in and paid the landlord the entire

lump-sum Social Security payment (\$968.50) toward the \$1,575.00 that was the initial payment required by the landlord (first and last month's rent plus damage deposit). The petitioner has paid the balance due on this amount by working for the landlord. His rent is now current.

ORDER

The department's decision is reversed.

REASONS

Ordinarily, when an individual receives a lump-sum payment his household becomes ineligible for ANFC for the number of months obtained by dividing the household's monthly "standard of need" (which is set by regulations--see W.A.M. § 2245.2) into the total amount of the lump-sum. W.A.M. § 2250.1. However, the same regulation allows the department to "offset" amounts against the lump-sum in the following three instances:

- 1) An event occurs which, had the family been receiving assistance, would have changed the amount paid;
- 2) The income received has become unavailable to the family for reasons beyond their control;
- 3) The family incurs and pays for medical expenses which offset the lump-sum income.

In Fair Hearing Nos. 6891, 8608, 9072, and 9273, the Board has examined the requirements of the above "offset" provisions. In those cases it held that subparagraph 2 of section 2250.1 (supra), the only one at issue both here and in the above cited Fair Hearings, establishes a two-part test: 1) unavailability, and 2) due to circumstances

beyond the control of the family. Regarding the first part of the test, the Board ruled that payments by an individual from a lump-sum to satisfy pre-existing legal obligations rendered that portion of the lump-sum "unavailable" to the individual within the meaning of § 2250.1(2) (supra).

Regarding the second part of the test (i.e., whether the unavailability was "beyond the control of the family"), the Board in those Fair Hearings held the determining factor to be "whether or not it was necessary to the petitioner to incur and pay for these bills".

In Fair Hearing Nos. 8608, 9072 and 9273, the board ruled that housing is a per se "necessity." In this case it must be concluded that it was "necessary" for the petitioner to use the entire lump-sum payment for housing expenses. The petitioner's former landlord had given the petitioner a notice to vacate for reasons the petitioner could not expect to cure (as long as the petitioner was on ANFC, he could not make up the arrearage and pay all the current rent on the first of each month). The new apartment was reasonable in both price and location.

In Fair Hearing No. 6891, the board noted that it would be contrary to public policy to require that a past due obligation be reduced to legal judgement before concluding that it is "necessary" to pay it. In this case, the petitioner spent his lump-sum to avoid legal action (being evicted) that appeared inevitable. Thus, the test of "necessity" set forth in the above-cited fair hearings is

met.<sup>2</sup> It is concluded that under the circumstances the lump-sum was "unavailable" to the petitioner for reasons "beyond his control." The department's decision is, therefore, reversed.

FOOTNOTES

<sup>1</sup>The job was a commission salesman, but unfortunately it has not resulted in providing the petitioner with income sufficient to go off ANFC.

<sup>2</sup>There is potential irony in this case in that under the department's regulations, had the petitioner remained in his old apartment and later been evicted, he may well have been eligible for additional ANFC-EA benefits to move to a new apartment, and those benefits might well have exceeded the one-plus month of regular ANFC benefits at issue in this case. See W.A.M. § 2813.2.

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